

### DISCUSSION OF THE AMENDMENT

Due to the length of the specification herein, Applicants will cite to the paragraph number of the published patent application (PG Pub) of the present application, i.e., US 2007/0185223, when discussing the application description, both in this section and in the Remarks section, *infra*, rather than to page and line of the specification as filed.

Claims 1 and 6 have been amended, as supported in the specification at paragraph [0021].

No new matter is believed to have been added by the above amendment. Claims 1-7 and 9-19 remain pending in the application.

REMARKS

The rejections under 35 U.S.C. § 103(a) of:

Claims 1, 2, 5-7, 10-11, 15, and 17-18, and 4 and 9, as unpatentable over U.S.

2003/0166735 (Clatty),

Claims 3 and 16, as unpatentable over Clatty and further in view of U.S. 5,405,884 (Londrigan et al),

Claims 4 and 9, as unpatentable over Clatty and further in view of U.S. 6,331,577 (Volkert et al),

Claims 12-14, as unpatentable over Clatty and further in view of U.S. 4,282,331 (Priest), and

Claim 19, as unpatentable over Clatty and further in view of U.S. 2006/0180274 (Burckhardt et al),

are respectfully traversed.

Claim 1 herein is drawn to a **shoe sole** comprising a tin-free polyurethane foam that has a density of from 100 to 800 g/l, a shore A hardness of 50 to 80, an elongation of 220 to 700% and a tear propagation resistance of 8 to 38 N/mm, and is obtained by reacting a) at least one polyisocyanate with b) at least one compound having isocyanate-reactive hydrogen atoms in the presence of as a catalyst, c1) at least one bismuth carboxylate in an amount of from 0.2 to 2% by weight, based on the total weight of the component b) and c2) at least one tertiary amine. (Emphasis added).

Claim 6 is of the same scope but is drawn to a process.

Thus, the claims now positively recite a shore A hardness (as well as a particular elongation and tear propagation resistance.) As previously advanced, Clatty is drawn to a **rigid, closed-cell polyurethane foam**, and therefore, such rigid polyurethane foams have an elongation at break of only several percent, high flexibility values are not required, and the

Shore D hardness is usually higher than 50. Shore A and Shore D are measured on different equipment and different forces are used; a specific value for Shore D hardness is much harder than the same numerical value for Shore A hardness.

Contrary to the finding by the Examiner, Comparative Example 4 (which uses a tin catalyst) is actually much closer to the presently-claimed invention than the rigid foam of Clatty because Comparative Example 4 is the same type of shoe sole foam as presently-claimed. It is well-known that what is the closest prior art is a finding of fact; the Examiner is not the final arbiter of what is the closest prior art. See also *Ex parte Humber*, 217 USPQ 265 (Bd. Pat. App. & Inter. 1981) (comparative data showing the claimed chlorine-containing compounds to be unexpected over various (non-prior art) chlorine-containing isomers was accepted as more probative over prior art, drawn to non-chlorine containing analogs of the claimed compounds, asserted to be closest.)

Regarding the remaining prior art relied on by the Examiner, the Advisory Action sheds no more light on their relevance beyond what was already stated in the Final Rejection, which has already been responded to by Applicants in the Request for Reconsideration after Final. This response is hereby incorporated by reference.

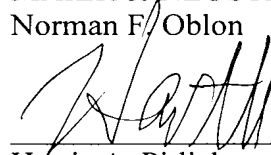
For all the above reasons, it is respectfully requested that the rejections be withdrawn.

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. The Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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